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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	

AT&T REPLY COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

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SUMMARY

AT&T shows in Part I that the comments overwhelmingly confirm that the Commission should not adopt further regulations requiring carriers to offer a no marketing option within the context of the total service relationship. As the Commission recognizes, customers reasonably expect carriers to use CPNI within the customer-carrier relationship for consumers' "benefit and convenience." Coupled with existing do-not-call rights, the approach adopted in the *CPNI Order* fully protects customers' reasonable privacy interests. Moreover, there is absolutely no statutory basis for mandating such an option. Indeed, the privacy and competitive balance Congress struck in Section 222 would be undone if the Commission required carriers to offer such an option because Section 222(c)(2) expressly reserves to carriers the right to use CPNI.

In Part II, AT&T demonstrates that there is no need to adopt extreme measures, such as predetermined fines or a strict liability standard, for abuse of other carriers' information because carriers will effectively protect their own rights. A more reasonable approach, as AT&T and MCI endorse, is for the Commission to state the rules regarding obligations as to other carriers' information. Because the greatest risk of abuse exists as incumbent local exchange carriers enter the long distance market, the Commission should expressly outline their obligations *vis-à-vis* other carriers.

In Part III, AT&T shows that that the Commission should not restrict foreign access to, or storage of, domestic CPNI. Section 222 applies to such information, and is sufficient, regardless of the location of CPNI. In these circumstances, imposition of artificial boundaries on CPNI access and storage would serve no useful purpose, although it could handicap U.S. carriers in the global market.

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Pursuant to the Commission's Further Notice of Proposed Rulemaking, released on February 26, 1998, and Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these reply comments on whether the Commission should (i) require carriers to offer customers a no marketing option; (ii) define carrier obligations as to information relating to other carriers and information service providers ("ISPs"); and (iii) restrict foreign access to, and storage of, domestic Customer Proprietary Network Information ("CPNI"). The comments confirm that the Commission should neither mandate a no marketing option nor adopt the FBI's proposals as to foreign access and storage. It should, however, clarify obligations as to other carrier information.

I. FURTHER REGULATION MANDATING A NO MARKETING OPTION IS UNNECESSARY AND CONTRARY TO CONGRESS' INTENT.

The comments overwhelmingly confirm that the Commission should not adopt further regulations to require carriers to permit customers to restrict use of CPNI for *all* marketing purposes.[1] *Further Notice*, paras. 204-205. Such regulation is unnecessary to protect consumers, has no statutory basis, and would serve only to frustrate the procompetitive goals of the 1996 Telecommunications Act.[2]

As BellSouth correctly points out, "[c]ustomers already have available to them all the rights and tools they need to prevent carriers from engaging in unwanted marketing activity within the existing total service relationship." For one, carriers operating in a competitive market have powerful incentives to honor reasonable customer expectations of privacy or risk losing customers to rivals.[3] Second, as the Commission found in the *CPNI Order*, and as SBC (at 5) confirms, customers, in fact, reasonably expect

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1 Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998 ("*CPNI Order*" and "*Further Notice*," respectively).

2 Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 151, et seq. ("1996 Act").

3 AT&T at 2; GTE at 3.

carriers to use CPNI within the existing customer-carrier relationship to offer them new and improved services, features and special promotions.[4] Third, as numerous parties point out, to the extent that consumers are concerned about intrusive telemarketing campaigns, they have the right to shield themselves from unwanted calls by directing carriers to place them on the firms' do-not-call lists.[5] In addition, many carriers, including AT&T, maintain do-not-mail lists.[6] Fourth, unlike in other contexts (*e.g.*, slamming), there is a distinct absence of customer complaints that would warrant the Commission even entertaining the possibility of creating new rules.

Indeed, only the Georgia Consumers' Utility Counsel (at 6) suggests that such an option should be mandated. However, its rationale is misplaced. It contends that Section 222(a) evinces "Congress' intent to protect consumers from telemarketing abuses that are inevitable in the wake of 'deregulation.'" There was no need for Congress to address telemarketing abuses in Section 222(a) because it had already done so five years earlier in enacting the

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[4] *See also* Bell Atlantic at 2; Intermedia at 5; Sprint at 2.

[5] AT&T at 2; BellSouth at 3; GTE at 3-4; MCI at 4; SBC at 6; Sprint at 5; U S WEST at 4. *See* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 7 FCC Rcd. 8752 (1992).

[6] BellSouth at 3; MCI at 4; U S WEST at 4.

Telephone Consumer Protection Act of 1991, which has been codified as Section 227 of the Communications Act. Moreover, as Bell Atlantic observes (at 2), a no marketing option would not mean that consumers receive less telemarketing contacts. To the contrary, they are likely to receive both more calls and more mail, albeit less useful, because of carriers' inability to target and tailor their marketing efforts.

In all events, there is no statutory basis for such a restriction. As Intermedia (at 4) demonstrates, "Congress' express effort to balance 'privacy and competition' suggests that carriers have a statutory right, albeit a limited one, to use CPNI for marketing. Thus, construing section 222 to foreclose completely carrier use of CPNI for marketing purposes would cut directly against the balance Congress sought to achieve."[7] There are no restrictions under Section 222(c) on carriers' use or disclosure of CPNI within the total service offering already being provided to the customer. MCI at 3; SBC at 1-2. And, if 222(c) has any meaning, it must be read to limit the general protection provision laid out in 222(a). Intermedia at 4-5. Most fundamentally, the Commission itself expressly found that "[t]he legislative history confirms . . . that in section 222 Congress intended neither to allow carriers

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[7] *See also* AT&T at 4-5; MCI at 3; SBC at 1-2; Sprint at 2-3; USTA at 3.

unlimited use of CPNI for marketing purposes as they move into new service avenues opened through the 1996 Act, nor to restrict carrier use of CPNI for marketing purposes altogether." *CPNI Order*, para. 37. Congress' careful balance should be observed by the Commission.[8]

In addition to constituting a major transgression of the Congressional balance struck in Section 222, a mandatory no marketing option would serve no beneficial purpose. As the Commission has properly found, "[m]ost carriers . . . view CPNI as an important asset of their business, and . . . hope to use CPNI as an integral part of their future marketing plans. Indeed, as competition grows and the number of firms competing for consumer attention increases, CPNI becomes a powerful resource for identifying potential customers and tailoring marketing strategies to maximize customer response." *CPNI Order*, para. 22. A mandatory no marketing option would, as Vanguard points out (at 6), infringe on the business operations of carriers, in a manner that Congress did not intend, and undermine the 1996 Act's procompetitive goals.

In short, there is no sound basis in law or policy for the Commission to adopt new regulations permitting consumers to restrict use of CPNI for all marketing purposes. Rather, the Commission should acknowledge that telecommunications service providers are permitted to use

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[8] MCI at 3; SBC at 2, 7; U S WEST at 3.

CPNI for the development and marketing of telecommunications services within the parameters of the total service approach. This construction will better serve the interests of consumers and the goals of the 1996 Act.

II. THE COMMISSION SHOULD ENFORCE THE CARRIER INFORMATION PROTECTION SECTIONS OF THE ACT.

Not surprisingly, there is a divergence of opinion on the extent to which the Commission should clarify carriers' obligations under Sections 222(a) and (b).[9] At the one extreme, Bell Atlantic (at 3) proclaims that there is not one documented instance in the record of carrier abuse of other carriers' information, and that the Commission is proposing "a solution in search of a problem." This sweeping statement is plainly inaccurate because AT&T, MCI and Sprint are in litigation with Pacific over its co-opting of their long distance customer billing databases for Pacific's own marketing initiatives. Sprint at 7-9.[10]

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[9] Although the Commission also inquires about protection of ISP information, as several parties correctly note, ISPs are not entitled to the carrier protections in 222(b). BellSouth at 5; USTA at 4-5; U S WEST at 7 n.16. Indeed, given the many artificial benefits currently enjoyed by ISPs, including the exemption from access charges and universal service obligations, it would be entirely inappropriate to imbue ISPs with carrier status for purposes of Section 222(b) without requiring them to shoulder carrier burdens under other sections of the 1996 Act and the Commission's rules.

[10] TRA (at 4, 11) asserts based on reseller customer surveys from the mid-1990s that AT&T had improperly used confidential reseller data. These assertions are totally

(footnote continued on following page)

At the other extreme, Intermedia (at 10) supports a predetermined fine of $40,000 per violation (as for slamming), and TRA (at 10) suggests a strict liability approach with heavy monetary penalties for abuse of carrier information.

AT&T supports a more reasonable approach, as other parties suggest. In particular, MCI (at 7) proposes that the Commission should state the rules regarding carrier proprietary information, and GTE (at 5) observes that carriers will be vigilant to protect their own rights. In these circumstances, there is no need for a strict liability standard or predetermined fines.

AT&T also concurs that the greatest risk of abuse exists as incumbent local exchange carriers ("ILECs") enter the long distance market and that the Commission should require them to maintain a "bright-line separation between ILEC retail operations, wholesale operations, and their presubscription operations." Intermedia at 9. As Intermedia points out, ILECs have made it clear that they employ separate systems for retail and wholesale operations,

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(footnote continued from previous page)

unsupported and incorrect. The 1996 Act codified the CPNI obligation that AT&T has always acknowledged was its duty with respect to resellers and other carriers to whom it sells service. AT&T may not use for competitive purposes the proprietary information imparted to it by those other carriers in the context of the carrier/customer relationship.

and it is therefore simple to prohibit the transfer of information between the two.

In general, AT&T agrees with MCI (at 8, 11 and 16) that PIC information, interconnected call information, access information, end user information relating to customers of other carriers using ILEC access services, and outPIC information should all be protected from ILEC marketing use under 222(b). ILEC access to IXC billing information that they obtain by virtue of providing a billing service is protected under 222(a), as are carrier-specific customer lists. MCI at 10. However, publicly available information, such as a customer list that a carrier chooses or is required to disclose in an unrestricted manner, loses proprietary status and any protection to which it may otherwise be entitled under 222(a) or 222(b).

III. THE COMMISSION SHOULD NOT RESTRICT FOREIGN ACCESS TO OR STORAGE OF DOMESTIC CUSTOMER INFORMATION.

As several parties point out, there is no basis in Section 222 for the Commission to restrict foreign access to, or storage of, domestic CPNI.[11] Although it is not AT&T's practice to store domestic CPNI abroad, AT&T agrees with GTE (at 7) that location of data abroad does not change any carrier's Section 222 obligations. On the other hand,

[11] Ameritech at 2; AT&T at 4 n.6; GTE at 7; Omnipoint at 9.

imposition of artificial boundaries on CPNI access and storage would increase costs and decrease efficiencies and could handicap U.S. carriers in the global market.[12] As two commenters point out, the existence of the Internet demonstrates that the storage location of data has little bearing on how and where it can be used.[13] In all events, any special needs that the FBI has with regard to law enforcement access to and use of CPNI should be a matter for Congress to consider, because that matter is outside the purview of the Commission's authority under Section 222.

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[12] MCI at 19; Omnipoint at 9.

[13] GTE at 7; MCI at 18.

CONCLUSION

For the reasons stated above, the Commission (i) should not adopt new and unnecessary regulations to permit consumers to restrict all marketing use of CPNI; (ii) should clarify issues as to carrier information; and (iii) should not adopt the FBI's suggested foreign access and storage restrictions on domestic CPNI.

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CERTIFICATE OF SERVICE

I, Hagi Asfaw, do hereby certify that on this 14th day of April, 1998, a copy of the foregoing AT&T Reply Comments on Further Notice of Proposed Rulemaking was served by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

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